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No. 05-986

Supreme Court, U.S.
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**In The
Supreme Court of the United States**

RENESAS TECHNOLOGY AMERICA, INC.,

Petitioner,

v.

UNITED STATES AND
MICRON TECHNOLOGY, INC.,

Respondents.

**On Petition For A Writ Of *Certiorari*
To The United States Court Of Appeals
For The Federal Circuit**

**BRIEF IN OPPOSITION OF
MICRON TECHNOLOGY, INC.**

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Federal Circuit ("Federal Circuit") correctly held that certain entries of dynamic random access memory semiconductors ("DRAMs") imported by Renesas Technology America, Inc. ("Renesas") were not "covered" by the first and second administrative review determinations of the antidumping order on DRAMs from Korea under 19 U.S.C. § 1675(a)(2)(C) and, therefore, were subject to the cash deposit rate paid upon entry when (i) Renesas purchased its DRAMs from a Japanese reseller unrelated to the Korean manufacturer, (ii) the domestic interested party's requests for reviews of the Korean manufacturer did not encompass the Japanese reseller's pricing practices, (iii) Renesas failed to request its own reviews of the reseller's pricing practices, and (iv) the Japanese reseller's pricing practices were not actually examined during the first or second administrative reviews.

**PARTIES TO THIS PROCEEDING
AND RULE 29.6 STATEMENT**

The parties to this proceeding are the same as those in the Federal Circuit: Petitioner Renesas and Respondents, the United States and Micron Technology, Inc. ("Micron"). Micron has no parent company, and no publicly held company owns 10 percent or more of Micron's stock.

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BRIEF IN OPPOSITION OF MICRON TECHNOLOGY, INC.

Micron respectfully opposes the petition for writ of *certiorari* filed by Renesas to review the judgment of the Federal Circuit. The Federal Circuit deemed that judgment to be non-precedential under Federal Circuit Rule 47.6(b), that is, "one determined by the panel issuing it as not adding significantly to the body of law." For the reasons set forth below, Renesas's petition should be denied.

I. OPINIONS BELOW

The decision of the Federal Circuit is unpublished, but is reported as *Renesas Tech. Am., Inc. v. United States*, No. 04-1473, -1474, 2005 U.S. App. LEXIS 13278 (Fed. Cir. July 1, 2005), *reh'g denied*, 2005 U.S. App. LEXIS 21877 (Fed. Cir. Sept. 19, 2005), *petition for cert. filed*, No. 05-986 (U.S. Feb. 2, 2006). The decision also is attached to Renesas's petition at Appendix 1-3.

The decision of the United States Court of International Trade ("CIT") is unpublished, but is reported at *Renesas Tech. Am., Inc. v. United States*, No. 00-00114, 2003 Ct. Intl. Trade LEXIS 105 (Ct. Int'l Trade Aug. 18, 2003), *rev'd*, No. 04-1473, -1474, 2005 U.S. App. LEXIS 13278 (Fed. Cir. July 1, 2005), *reh'g denied*, 2005 U.S. App. LEXIS 21877 (Fed. Cir. Sept. 19, 2005). The decision also is attached to Renesas's petition at Appendix 4-19.

II. JURISDICTION

The Federal Circuit entered judgment on July 1, 2005, and denied Renesas's petition for panel rehearing and rehearing *en banc* on September 19, 2005. (Pet. App. 3, 67-68).

Reneas sought and received an extension of time to file its petition for writ of *certiorari* to and including February 2, 2006. Reneas filed its petition for writ of *certiorari* on February 2, 2006. The jurisdiction of this Court has been invoked under 28 U.S.C. § 1254(1).

III. STATUTES AND REGULATIONS

Pursuant to Rules 15.3 and 24.2, Respondent Micron is satisfied with Petitioner's statement except with respect to Petitioner's presentation of regulations. The following regulations apply.¹

§ 353.2 Definitions. . . .

(k) *Interested party*. "Interested party" means: . . .

(3) A producer in the United States of the like product or seller (other than a retailer) in the United States of the like product produced in the United States;

¹ The regulations applicable to these proceedings are those in effect before the enactment of the Uruguay Round Agreements Act ("URAA"). The earlier version of these regulations is published in the Federal Register at *Antidumping Duties*, 54 Fed. Reg. 12742 (Dep't Commerce Mar. 28, 1989). The post-URAA regulations, 19 C.F.R. Part 351, apply to "administrative reviews initiated on the basis of requests made on or after the first day of July 1997. . . . Segments of proceedings to which part 351 [i.e., the post-URAA regulations] do not apply will continue to be governed by the regulations in effect on the date the . . . requests were made for those segments. . . ." 19 C.F.R. § 351.701. Commerce initiated the first review on June 15, 1994, *Initiation Of Antidumping And Countervailing Duty Administrative Reviews And Request For Revocation In Part*, 59 Fed. Reg. 30770 (Dep't Commerce June 15, 1994) and the second review on June 15, 1995, *Initiation Of Antidumping And Countervailing Duty Administrative Reviews*, 60 Fed. Reg. 31447 (Dep't Commerce June 15, 1995).